



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-B-

DATE: DEC. 21, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL
IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

In regards to determining a petitioner's good moral character, section 101(f) of the Act states in pertinent part:

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

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(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner was born in Morocco and initially entered the United States on August 12, 1993, as a B-2 nonimmigrant visitor. He married his U.S. citizen spouse, K-B-,¹ on [REDACTED] in [REDACTED] Illinois. The Petitioner filed the instant petition on January 26, 2006. On April 20, 2006, the Director issued a notice of intent to deny (NOID) the petition, finding that the Petitioner had not established his good moral character. On June 22, 2006, the Director issued a second NOID advising that the Petitioner had not established that K-B- subjected him to battery or extreme cruelty and, noting the Petitioner's criminal history, that he still had not established that he possessed good moral character. The Petitioner responded to the NOIDs, but the Director found the responses insufficient to establish the Petitioner's eligibility and denied the petition on these grounds. The Petitioner filed an appeal.

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, does not establish the Petitioner's eligibility.

¹ Names withheld to protect the individuals' identity.

III. ANALYSIS

A. Battery or Extreme Cruelty

In his November 4, 2003 affidavit and in the various affidavits he provided in response to the NOIDs, the Petitioner described K-B-'s behavior and instances of abuse prior to their marriage, which included stealing from him, stalking him, and falsely accusing him of shoplifting. After their marriage, the Petitioner asserted that K-B- focused on defrauding her own family members of their money, and that when he expressed disapproval, he and K-B- would argue and she would force sex on him in order to establish her control. He indicated that he felt weak because K-B- was nearly twice his weight, and that he was unable to confide in anyone about her abuse. The Petitioner described an occasion when K-B- physically assaulted him with a broomstick after an argument. The Petitioner described repeated incidents of fighting and abuse, claiming that several culminated in K-B- having the Petitioner falsely arrested for domestic abuse. He indicated that these episodes continued after their child was born, and expressed fear that K-B- would hurt their child. In his November 4, 2003 statement, the Petitioner claimed that he "had never had any previous encounters or problems with the law until the time I met [K-B-]," and that after they split up his life was "relatively peaceful without any additional problems with the law until [their] official separation."

The Petitioner also submitted letters from [REDACTED] the Petitioner's girlfriend, who indicated that she had known the Petitioner since June of 2002. Ms. [REDACTED] provided a detailed, probative account of K-B-'s continued abuse and manipulation of the Petitioner during his attempts to visit his son and particularly during their custody proceedings.

The Petitioner submitted various documents relating to the custody proceedings for his son, including psychological evaluations of K-B- and caseworker comments indicating that the caseworker found K-B- to have made suspect charges regarding the Petitioner's alleged abuse of their child.

On appeal, the Petitioner asserts that the Director did not give sufficient weight to the Petitioner's statements and the independent psychiatric reports taken during the Petitioner's custody battle, and maintains that his evidence establishes K-B-'s prior and continued abuse toward the Petitioner.

The Petitioner has provided sufficient evidence to establish that K-B- battered him and subjected him to extreme cruelty. As discussed, we have reviewed this case *de novo*, including the psychological evaluations and documents produced during the Petitioner's custody proceedings regarding his son. As it relates to the Petitioner's claim of abuse, the statements of the Petitioner, his friend, and the caseworkers involved in his son's custody proceedings contain specific and probative details of his relationship with K-B- to establish that she battered the Petitioner and that her behavior constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner has provided sufficient evidence to demonstrate by a preponderance of the evidence that K-B- subjected him to battery and extreme cruelty. The Petitioner, therefore, has satisfied

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section 204(a)(1)(A)(iii)(I)(bb) of the Act. However, the petition remains unapprovable for the following reason.

B. Good Moral Character

The record shows that the Petitioner lacks good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states, in pertinent part, that “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner’s claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

The record demonstrates the following regarding the Petitioner’s criminal history:

- On [REDACTED], 1995, the Petitioner was charged by the [REDACTED] Police Department with Domestic Battery in violation of 720 of the Illinois Compiled Statutes (ILCS) 5/12-3.2(a)(1) (Case No. [REDACTED]). On [REDACTED] 1995, the charge was stricken off with leave to reinstate.
- On [REDACTED] 1996, the Petitioner was arrested by the [REDACTED] Police Department for Retail Theft in violation of 720 ILCS 5.0/16A-3(a), a misdemeanor. On [REDACTED] 1996, he pled guilty and was convicted. The Petitioner was sentenced to a year of conditional discharge and restitution in the amount of \$147.67 (Case No. [REDACTED]).
- On [REDACTED] 1996, the Petitioner was arrested by the [REDACTED] Police Department for Battery in violation of 720 ILCS 5/12-3.2(a)(1) and unlawful damage to a vehicle in violation of 720 ILCS 5.2, both misdemeanors (Case No. [REDACTED]). The Petitioner pled guilty and was convicted of battery. He was sentenced to one year of supervision. The charge of unlawful damage to a vehicle was stricken off with leave to reinstate.
- On [REDACTED] 1997, the Petitioner was arrested by the [REDACTED] Police Department for Domestic Battery in violation of 720 ILCS 5/12-3.2(a)(1), and Disorderly Conduct involving a bomb threat to K-B- in violation of 720 ILCS 5/26-1(a)(1), both misdemeanors (Case No. [REDACTED]). On [REDACTED] 1997, the case was stricken off with leave to reinstate.

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- On [REDACTED] 1997, the Petitioner was arrested by the [REDACTED] Police Department under the name "[REDACTED]" for Domestic Battery in violation of 720 ILCS 5/12-3.2(a). On [REDACTED], 1997, the charge was stricken off with leave to reinstate (Case No. [REDACTED]).
- On [REDACTED] 1998, the Petitioner was arrested by the [REDACTED] Police Department for Domestic Battery, a misdemeanor violation of 720 ILCS 5.0/12-3.2(a)(1), as well as two counts relating to violation of an order of protection, a misdemeanor violation of 720 ILCS 5.0/12-30(A)(1), and 720 ILCS 5/12-30. On [REDACTED] 1998, the Petitioner was served with an emergency protection order prohibiting him from contacting K-B-. On [REDACTED] 1999, the Petitioner was arrested by the [REDACTED] Police Department on two charges of violation of the order of protection. On [REDACTED] 1999, he pled guilty and was convicted of the charge of domestic battery as well as one charge of violation of a protection order. He was sentenced to 20 days of community service for each charge and placed on two years of conditional discharge. He was also sentenced to two days in the [REDACTED] Department of Corrections with credit for time served (Case No. [REDACTED]).

The Petitioner also submitted affidavits relating to his criminal history. In each affidavit he indicated that he was not responsible for any criminal actions, and provided various explanations for his arrests and convictions. As it relates to his retail theft conviction, the Petitioner claimed that K-B- falsely reported him for retail theft when he, in fact, had attempted to anonymously report her for her own retail theft. Although the Petitioner also asserted that the store security officers searched him but did not find any items in his possession, he admitted that he pled guilty to and was convicted of the retail theft charge. He indicated that he pled guilty on the advice of his attorney in order to avoid a potentially more severe sentence if he were convicted at trial, and because he did not think his attorney was comfortable representing him. The Petitioner's explanation is not supported by the partial record that he provided. The charging documents from the court reveal that he "took possession of the below merchandise having a value less than \$150.00 displayed for sale in [REDACTED] and that he was ordered to pay restitution to [REDACTED] in the amount of \$147.67. Although the documents the Petitioner provided did not include a list of "the below merchandise," it appears to have been tangible goods with a specific assigned value, which contradicts the Petitioner's claim that the store security found nothing on him.

With respect to his [REDACTED] 1998 arrest for domestic battery, the Petitioner claimed that K-B- had falsely reported the Petitioner for beating her on the back when the bruise was actually the result of an epidural that she had received during the birth of her son approximately [REDACTED] prior. The Petitioner suggested that K-B- had been slow to heal from the epidural because she was diabetic and anemic. The Petitioner explained that he was unaware that K-B- had secured an order of protection against him when he violated the order on [REDACTED] 1999; however, the court records he provided contradict this claim and show that the order of protection was served on the Petitioner in open court on [REDACTED], 1998.

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His remaining conviction for battery does not appear to relate to K-B-. Instead, at the time of this incident, the Petitioner indicated that he was not residing with K-B- and that he was arrested after an altercation that involved a friend of the roommate the Petitioner was living with at that time.

The Petitioner also provided an affidavit from his girlfriend who attested that she had never seen the Petitioner display aggressive or violent behavior but had witnessed K-B-'s manipulative behavior toward the Petitioner. Because the Petitioner's girlfriend confirmed she had met the Petitioner in June of 2002, her statements do not relate to the Petitioner's criminal history prior to 2002.

In his responses to the Director, the Petitioner suggested that the Director not take into consideration any arrests and convictions outside "the three to five year period" because it is only this period of time that should be the basis for evaluating his good moral character. The Petitioner also asserted that because he had not been arrested since "his physical separation from K-B-," this showed that his "pattern of arrests and plea agreements was the product of an abusive relationship" rather than evidence that he lacks good moral character. Regarding criminal history that occurred outside of the three-year period prior to filing, although the regulation at 8 C.F.R. § 204.2(c)(2)(v) only requires evidence of a petitioner's good moral character during the three years preceding the filing of the petition, it does not limit U.S. Citizenship and Immigration Services' (USCIS) inquiry into a petitioner's moral character to only this period. In fact, section 204(a)(1)(A)(iii) of the Act does not prescribe any specific time period during which a petitioner's good moral character must be established. Additionally, although the statutory provisions for self-petitioning abused spouses have been amended several times since the publication of the interim rule at 8 C.F.R. § 204.2(c), a final rule has not yet been promulgated. Notably, none of the statutory amendments have changed the temporal scope of the good moral character requirement for self-petitioning abused spouses.

Although the Petitioner also indicated before the Director that there were "clear errors [in court documents] that are clearly inconsistent with the charge made on the [redacted] Police Reports," the Petitioner did not provide amended records or otherwise explain where his criminal history and submitted documents were contradictory. On appeal, the Petitioner again suggests that his arrest records and court records are contradictory, but does not provide any evidence to explain the purported contradictions or to establish that he has resolved the alleged contradictions. He contends that he "should be allowed to mitigate the record created by numerous [battery] complaints lodged by [K-B-] against [the Petitioner]," but does not explain how he would do so. The Petitioner also argues that USCIS erroneously failed to consider whether his offenses are waivable under section 237(a)(7)(A) of the Act, 8 U.S.C. § 1127(a)(7)(A), which provides a deportability waiver for aliens convicted of certain crimes involving domestic violence. However, the scope of this proceeding is the Petitioner's statutory eligibility under section 204(a)(1)(A)(iii) of the Act, not his removability and eligibility for a waiver under section 237(a)(7)(A) of the Act. The Petitioner also has not established that any of his convictions were a result of K-B-'s abuse. Insofar as the Petitioner continues to maintain his innocence, we may not look behind his conviction for those offenses to reassess his guilt or innocence. See *Matter of Rodriguez-Carillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

Here, the Petitioner pled guilty and was found guilty of retail theft and two separate offenses of battery, and was found guilty of violating a protective order for K-B-. The Petitioner does not claim that he committed these acts under extenuating circumstances but rather that he did not commit these acts. Although we acknowledge that the Petitioner was in an abusive relationship with K-B-, we cannot look behind his pleas and convictions.

Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). Although the Petitioner discussed his convictions in his affidavits, his affidavits include contradictory claims regarding the circumstances of his arrests and convictions. The Petitioner has not demonstrated any extenuating circumstances regarding his arrests and convictions, and instead has provided statements that include contradictory information that is unsupported by police and court records. Upon review of the record in totality, the Petitioner's convictions, his lack of accountability for the circumstances leading to his arrests, and lack of evidence establishing extenuating circumstances, demonstrate conduct that falls below the average citizen in the community and adversely reflects upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The Petitioner has therefore not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not demonstrated that he possesses good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reason.

ORDER: The appeal is dismissed.

Cite as *Matter of B-B-*, ID# 14658 (AAO Dec. 21, 2015)